

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHARIF HAMZAH,

Plaintiff,

v.

OPINION & ORDER

13-cv-491-wmc

WOODMANS FOOD MARKET INC.,

Defendant.

Plaintiff Sharif Hamzah alleges that his former employer, defendant Woodmans Food Market Inc. (“Woodman’s”): (1) discriminated against him on the basis of his age and ethnicity; and (2) retaliated against him for filing internal complaints about this discrimination. The court previously dismissed Hamzah’s lawsuit without prejudice, because he failed to allege sufficient facts to make his claims plausible. (Opinion & Order (dkt. #5).) Hamzah timely submitted an amended complaint (dkt. #6), which the court again screens pursuant to 28 U.S.C. § 1915(e)(2) to determine whether Hamzah’s proposed action (1) is frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. With one exception, the court concludes that Hamzah has now stated claims that are sufficient to pass screening under Title VII, 42 U.S.C. § 2000e *et seq.*; and the ADEA, 29 U.S.C. § 621 *et seq.* Accordingly, he may proceed with most of his claims beyond the pleading stage.

ALLEGATIONS OF FACT

In addressing a *pro se* litigant’s pleadings, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this order, the

court accepts the plaintiff's well-pled allegations as true, resolves inferences in his favor and assumes the following facts.

Sharif Hamzah was employed at Woodman's West during the relevant time period. When Hamzah was hired, he was 43 years of age; at termination, he was 46. Hamzah alleges generally that throughout his employment, various staff members and supervisors at Woodman's harassed him by: (1) voicing various slurs regarding his ethnicity and age; (2) issuing discriminatory directives; and (3) interfering with his job duties. Hamzah further alleges that working in such a hostile and discriminatory environment was extremely difficult.

On three separate occasions during his employment, Hamzah alleges that he filed detailed written complaints with Woodman's corporate headquarters asking for help in remedying the abusive and hostile work environment. Specifically, the complaints reflect his opposition to alleged discriminatory statements predicated on his age and ethnicity. Woodman's store supervisor, "Dale," warned Hamzah that if he did not stop filing complaints, he would be terminated and that there would be no legal recourse. After this threat, Hamzah filed at least one more complaint with the corporate office.

On the date of Hamzah's termination, the outside supervisor, Jacob Bemis, told him that "blacks don't work with whites" while on duty, because "you don't belong with us." (Am. Compl. (dkt. #8) 1-2.) Bemis also told Hamzah that he was "too old to work on parcel and carts." (*Id.* at 3.) Bemis went on to alter his duties for the day, informing Hamzah that he had to remain on parcel pick-up for the entire shift. This reassignment isolated Hamzah and ensured that he could not work on his assigned duty of gathering carts with younger Woodman's employees.

Hamzah complied with Bemis's orders, but he then noticed Bemis enter the main office and speak with Dale. Minutes later, front end supervisor Gabe O. came outside and said to Hamzah, "Told you, you don't belong to the right ethnic group" and that "Dale wants to talk with you." (Am. Compl. 2.) Dale terminated Hamzah that same day.

OPINION

I. Discrimination Based on Ethnicity

Title VII makes it unlawful for an employer to discharge or "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C. § 2000e-2(a)(1). Hamzah alleges he was harassed on the basis of his ethnicity. More specifically, he alleges that various Woodman's staff members and supervisors not only directed discriminatory slurs at him throughout his employment and also interfered with his job duties. This tends to support a claim for a hostile work environment under Title VII.

To find a hostile work environment, (1) the victim must subjectively perceive the environment as abusive, *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993); and (2) the environment must also be "objectively hostile or abusive," *id.* at 21. The second factor requires an employer's conduct be sufficiently "severe or pervasive" such that it would materially alter the conditions of employment for a typical employee. *Patton v. Keystone RV Co.*, 455 F.3d 812, 815 (7th Cir. 2006) (quoting *Saxton v. Am. tel. & Tel. Co.*, 10 F.3d 526, 533 (7th Cir. 1993)). In assessing the environment, the court may consider "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or

humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. *Id.* at 23.

Here, Hamzah alleges that he personally perceived the environment at Woodman's as abusive, an allegation which is supported by sufficient, specific alleged facts to be plausible. His claim to an *objectively* hostile environment is also plausible: he alleges not only that he was frequently subjected to racial slurs and taunts, but also that supervisors continually interfered with his job duties in allegedly specific, unreasonable ways, suggesting racially discriminatory conduct that was not only frequent, but also interfered with his work performance. At the screening stage, these allegations are sufficient for Hamzah to proceed on his hostile work environment claim.

Hamzah also appears to allege that he was terminated on the basis of his ethnicity, which is likewise prohibited by Title VII. *See* 42 U.S.C. § 2000e-2(a)(1) (making it unlawful to discharge an individual because of race, color, religion, sex or national origin). On the date of his termination, Bemis allegedly informed Hamzah that "blacks don't work with whites while on duty" and then left to speak with Dale, the store supervisor. Minutes later, Gabe O. came out, said, "Told you, you don't belong to the right ethnic group," and sent him to speak with Dale. This incident, Hamzah alleges, then "resulted in [his] unlawful termination."

Taking all of these allegations as true, as the court must at the pleading stage, Hamzah has stated a claim for unlawful termination under Title VII based on his ethnicity, and he may proceed on that claim as well.

II. Age Discrimination

Next, Hamzah alleges that throughout his employment at Woodman's and on the date of his termination, Bemis and Gabe said he was too old to work at Woodman's generally and on parcel and carts specifically. The ADEA makes it unlawful for an employer "to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1).¹

The Seventh Circuit has assumed without deciding that plaintiffs may bring hostile environment claims under the ADEA. *Racicot v. Wal-Mart Stores, Inc.*, 414 F.3d 675, 678 (7th Cir. 2005); *see also Fugage v. Dolgencorp, LLC*, 555 F. App'x 600, 603 n.1 (7th Cir. 2014). The facts Hamzah pleads in support of this claim are essentially the same as those he alleges in support of his Title VII hostile environment claim: staff members frequently made remarks about his age, changed his work duties to keep him away from younger employees and forced him to work in an isolated capacity. He also alleges that both the discriminatory remarks and the alteration of his duties were frequent.

Again, Hamzah has now pled sufficient facts to make it plausible, at least for screening purposes, that the age-based harassment and discrimination he suffered was severe and pervasive and that he was subject to a hostile work environment.

At the same time, Hamzah has not alleged sufficient facts for the court to draw a reasonable inference that he was *terminated* because of his age. Moreover, it is not entirely clear that Hamzah intends to state such a claim. While he was again told on the date of his

¹ This protection extends only to employees who are at least 40 years old. 29 U.S.C. § 631(a). Hamzah has alleged in his amended complaint that he was above 40 years of age during his entire employment at Woodman's, so the ADEA's protections do apply to him.

termination that he was “too old” to work on parcel and carts, nothing suggests that this played any role in Dale’s decision to terminate him from employment. There is no connection, at least not as alleged, between his altered job duties on that date and his termination. Therefore, while Hamzah may proceed on his hostile work environment ADEA claim, he has not stated a claim for wrongful termination based on age.

III. Retaliation

Finally, Hamzah has alleged sufficient facts to proceed on his Title VII and ADEA retaliation claims. A claim for retaliation under either statute requires the plaintiff to show that he: (1) engaged in statutorily protected activity, such as opposing unlawful employment practices; (2) was the object of an adverse employment action; and (3) that the adverse employment action was caused by his opposition to the unlawful employment practice. *Northington v. H & M Int’l*, 712 F.3d 1062, 1065 (7th Cir. 2013) (Title VII); *Smith v. Lafayette Bank & Trust Co.*, 674 F.3d 655, 657 (7th Cir. 2012) (ADEA).

Hamzah alleges that he engaged in protected activity by filing complaints opposing ethnicity-based harassment prohibited by Title VII and age-based harassment prohibited by the ADEA. Hamzah also alleges that he was terminated, which qualifies as an adverse employment action. Finally, the court may infer the required causal link based upon Hamzah’s allegations that: (1) Dale warned him he would be terminated unless he stopped filing complaints; (2) he filed another complaint despite the warning; and (3) he was then terminated. Accordingly, Hamzah may proceed on these claims as well.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Sharif Hamzah's request for leave to proceed on claims against defendant Woodman's Food Market Inc. is GRANTED IN PART and DENIED IN PART consistent with the opinion above.
- 2) The summons and complaint are to be delivered to the U.S. Marshal for service on defendant.
- 3) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney as required above.
- 4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 19th day of November, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge